

SERVED: September 30, 1992

NTSB Order No. EA-3691

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 23rd day of September, 1992

_____	)	
THOMAS C. RICHARDS,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-12325
v.	)	
	)	
BASSEM BOURHAN,	)	
	)	
Respondent.	)	
_____	)	

**ORDER DISMISSING APPEAL**

The Administrator has moved to dismiss the appeal filed by the respondent in this proceeding because (1) the notice of appeal was not filed within 10 days after the law judge issued a written decision on April 28, 1992,<sup>1</sup> as required by Section 821.47 of the Board's Rules of Practice (49 CFR Part 821), and (2), assuming a timely notice of appeal was filed, the appeal was not perfected by the filing of a timely appeal brief, as required by Section 821.48(a).<sup>2</sup> We will grant the motion, to which

<sup>1</sup>The law judge's order granted a motion by the Administrator for summary judgment on his complaint, which alleged that revocation of respondent's airline transport pilot certificate was mandated by Section 609(c) of the Federal Aviation Act of 1958, as amended, for a federal court drug offense conviction.

<sup>2</sup>Sections 821.47 and 821.48(a) provide as follows:

"§821.47 **Notice of Appeal.**

respondent filed only a partial response.

In answer to the Administrator's assertion that respondent's notice of appeal was not filed until May 15, 1992, respondent essentially submits that he does not know when it was in fact filed, since he trusted another inmate to prepare and file the notice for him. He maintains, nevertheless, that the notice was filed within 10 days after he received the (law judge's) order.

Although it does not appear that respondent has established that good cause exists to excuse his late notice of appeal, we need not decide the motion to dismiss on that basis alone, for respondent has provided no explanation for his failure, to date, to file an appeal brief, which document should have been served no later than May 28, 1992.<sup>3</sup> That procedural default, for which no justification appears, renders respondent's appeal subject to dismissal on the Administrator's motion.

(..continued)

A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving upon the other parties (pursuant to §821.8) a notice of appeal within 10 days after an oral initial decision or an order has been served.

"§ 821.48(a) **Briefs and oral argument.**

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief."

<sup>3</sup>The absence of good cause to excuse the late notice of appeal would in itself warrant the dismissal of respondent's appeal. See Administrator v. Hooper, NTSB Order No. EA-2781 (1988).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's motion to dismiss is granted, and
2. The respondent's appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.